Supreme Court, U.S.
FILED

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No. 94 -

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1995

ADELBERT G. CLOSTERMANN,
Petitioner, pro-se

v.

THE HONORABLE LEE JOHNSON, CHARLES CROOKHAM, RUTH CINNIGER: WARREN C. DERAS, OREGON STATE UNIVERSITY FOUNDATION INC., CATHOLIC ARCH DIOCESE OF OREGON,INC., and UNIVERSITY OF PORTLAND INC.,
Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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August 1994

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QUESTIONS PRESENTED

Introduction:

Plaintiff, pro-se, the only lawful personal representative of Martin Zirmer [A 10, 11, 12] filed a complex civil rights complaint alleging Fifth Amendment [taking clause] and Fourteenth Amendment [due process] violations [A5] and extraordinary transgressions [Art VI] of legal principles [A 4, 5] by collusive state and non-state defendants acting under void authority [A 2, p. 82]. Jury trial, declaratory judgment, restitution of diverted funds and other relief requested.

The District Judge avoided complaint facts. She granted FRCP 8 (a) motions [A 9] alleging violation of "short plain statement." This is undefined [A 38]. Herein, confusion is asserted in the eyes of defendant beholders. They benefited from their illegal actions.

In so doing, she dismissed indispensable state defendants, viz: a statutory disqualified state probate judge [ORS 14.260] [A 7] [A2-1] [A 13], the Attorney General and Assistant Attorney General acting under void power [ORS 180.060] [A 8] and non-state defendant private attorney as judicial delegate while

exercising inherently illegal judicial prerogatives [A 14, 15]. He orchestrated, with court concurrence, the illegal diversion of over Five Hundred Thousand ($500,000) Dollars of estate and encumbered funds to unentitled defendants.

The case was smothered in the court of first resort subjecting plaintiff, Civil Rights victim, to appellate hurdles. [A 1,2,3]

The Ninth Circuit panel restricts review to abuse of judicial discretion and errors of law. Abuse and legal errors are evident

The District Judge and the Ninth Circuit failed to address the acts of a statutory disqualified judge and his non-statutory delegation of judicial authority to a private attorney, subservient to the disqualified judge. He adopted the forbidden acts of the attorney general, extending the facilities of their office to those whom the constitution and statutes were intended to restrain.

These failures flowed into the Ninth Circuit. The District Judge relied on a statement by the disqualified judge [A 14, 15] that plaintiff was denied a claim for attorney fees based on a pre-arranged retainer [A 16, 17, 31], contingent on the recovery of money in a successful specific performance suit. This reliance is

misplaced. A probate morass was created on his appointment of his private attorney to examine the retainer [A 14, 15]. This was not an estate claim which follows a sworn statutory procedure, and not an issue.

The probate judge had no statutory control over a client-directed retainer or segregated fund recovery. This premised a host of abuses and court-directed intimidations resulting in a probate morass under the void power of his judicial delegate, [A 14, 15].

The District Judge and the Ninth Circuit panel concealed official acts which the Constitution and Civil Right Acts were intended to restrain and construed an appeal right on the law into violation of a court order incapable of compliance.

This diverted a jury trial.

If this decision stands it would court license or exempt violators of Art VI [A 5], and the Fifth and Fourteenth Amendments [A 5, 6] and state statutes. [A 7, 8]

Civil Rights are guaranteed to all persons. [A 6]

The Defendant's act was precipitated when the

probate judge declined to give statutory advice to plaintiff. [ORS 114.275] [A 8]

The Ninth Circuit opinion appears directed to maintaining docket standing unrelated to enforcing that which the Civil Right Acts and the Constitution is riveted for the protection of persons.

The Ninth Circuit decision unilaterally regarding disobedience of a court order to amend complaint lacks record support. Plaintiff appealed the dismissal of state defendants and thereafter appealed the dismissal of non-state defendants. A motion to consolidate both appeals was filed 27 October 1992, backed with record facts.

The panel denied the motion holding all issues could be resolved in the second appeal. The appeals were based on the law as mis-interpreted by the District Court. The decision not to amend the complaint was based on the court exonerations of all parties. If such were an order to amend it was, in the light of court exonerations, incapable of compliance. Court discretion must be applied within legal principles. This was avoided. This stretches court power to the breaking point.

Question 1:

Did the Congress empower the judiciary to license civil rights violators by granting them immunities and benefits in a complex complaint not subject to dismissal?

Question 2:

Aren't all persons entitled to an unprejudiced impartial judge? If so, are the acts of a statutory disqualified judge and his private attorney delegate with judicial prerogatives, and the Attorney General forbidden to act herein, null under the Fifth and Fourteenth Amendments, Oregon law and common legal principles?

Question 3:

Can the Ninth Circuit panel penalize plaintiff in civil rights case exercising appeal rights on the law in a case not subject to dismissal in the court of first resort?

THE PARTIES - THEIR ROLES

Plaintiff, a sixty-year family friend and thirty-year attorney for the Zirmer family and individual practitioner with over forty years probate courts experience was entrusted and retained by surviving son, Martin Zirmer, to successfully recover over Four Hundred Thousand ($400,000) Dollars in a defaulted realty sale [A 16, 17]. Speculative recovery was successful. Purchasers had alienated Zirmer's security without his approval. [A 23]

Plaintiff was also entrusted by Zirmer as personal representative under his Will. Court administrator appointment under seal entitled plaintiff to full faith and credit wherever presented. [A 10, 11, 12]

Plaintiff was counselled by a long-time probate judge retired. He found the Will administration in order and Judge Johnson's acts irregular. [A 2-20]

Appellate chronicles reveal Judge Johnson's disdain for statues and rules, See Harbart [A 3 p. 162]

STATE DEFENDANTS: Judge Lee Johnson, represented by Attorney General, is a timely disqualified chief probate judge [A 7, 13] [ORS 14.260] [A 13] [A2-1] in a 1 judge department of a 21-judge judicial district of 600,000 plus inhabitants.

STATE ATTORNEY GENERAL, represented by itself, lacked supervision over Assistant Attorney General Cinniger. She provided forbidden legal advice and facilities to private litigants not thereto entitled. [ORS 180.060] [A 8]

NON STATE DEFENDANTS: Warren Deras, represented by Oregon State University attorneys, is a private attorney to Judge Johnson. He acted under Judge Johnson's void ex parte sua sponte appointment [A 14, 15] as "temporary co-personal representative of Zirmer. [A2-3A] [ORS 111.005] [A 8]

His appointment by a disqualified judge and acts are void under Oregon law. He asserted his void appointment. He brought in assistant attorney general Cinniger, and the defendants below who were not entitled to benefit under the Will. He used defamations, deceptions and intimidations to achieve illegalities of purpose.

He is not facially vested with full faith and credit, [A 8, 14, 15] or any statutory recognition. [A 27, 28]

OREGON STATE UNIVERSITY INC. represented by its counsel, is a state education facility. It was named with University of Portland and Catholic Arch Diocese as trustee guidelines in the Zirmer Will [A 2 #4] in disbursing potential charitable trust funds to worthy recipients. **UNIVERSITY OF PORTLAND** and **CATHOLIC ARCH DIOCESE** are represented by their counsel.

The Diocese was vested with the Zirmer dwelling. Oregon State received a Fifty Thousand ($50,000) Dollar delinquent balance due on a Zirmer family memorial pledge outside the Will, executed at real property sale. The delinquency was promptly satisfied out of the successful specific performance suit recovery for the sole recovery of money.

The above defendants had no interest in the Estate or Will. [A 23, 24, 25]

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August 1994

Certiorari is particularly appropriate because a complex civil rights complaint details destructively novel state power under illusory authority by collusive disqualified state and non-state actors violating federal and state restraints.

Petitioner Adelbert G. Clostermann, pro se, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The June 8, 1994, Court of Appeals opinion is unreported. It is reprinted in Appendix 35, following the denial of Appellants petition for rehearing or alternatively an en banc rehearing of a March 16, 1994, [A 38] [A 60] Memoram opinion before the Honorable Fletcher, Brunetti and Trott, Circuit Judges.

The District Court opinion dismissing state defendants is unreported. It is referenced at the conclusion of the July 20, 1992 argument. [A 34]

The District Court dismissals are unreported and included at [A 38-40].

JURISDICTION

The Court of Appeals filed a memorandum [A 57-59] decision June 8, 1994. This petition is timely, filed within ninety (90) days thereof. This court has jurisdiction under 28 USC 1254(1).

CONSTITUTIONAL PROVISIONS

The construction of constitutional provisions and state statutes are not involved. Their application is involved and is referenced as hereinafter described. [A 4-9]

STATEMENT OF THE CASE

Congress did not empower the judiciary to license or exempt state and non-state persons, acting under illegal assumption or delegation of color of law, creating benefits to themselves violative of civil rights acts and constitutional restraints in complex civil rights complaint not subject to dismissals; and penalizing plaintiff victim for exercising appeal rights.

The District Judge disregarded complaint facts and plaintiff's argument against FRCP 8 (a) motions [A 21-38]. She exonerated state defendants during argument without right to amend [A 37-38] and thereafter non-state defendants.

Plaintiff's Sect. 1983 narrative complaint [A 2-92] documented collusive step-by-step details of constitutional and state statutory violations by state disqualified defendants in their official and personal status. [ART VI] [A 5] This enabled them to divert over Five Hundred Thousand ($500,000) Dollars and benefits to themselves and non-state defendants not thereto entitled. This over plaintiff objections.

The state judiciary adopted a hands-off policy.

The above followed a series of complex events revealed in the complaint.

Zirmer, in May 1989, entrusted plaintiff to recover Four Hundred Twenty Thousand Three Hundred Eighty-One and 84/100 ($420,381.84) Dollars in a defaulted land sale agreement under his fifty (50%) directed retainer contingent on money recovery. [A 16, 17] Successful recovery was speculative. [A 23]

Martin Zirmer suffered an unanticipated at-home death November 18, 1989.

Plaintiff was entrusted with his Will. Appointment as Personal Representative of Zirmer was validated by circuit court clerk under seal. This granted full faith and credit wherever presented. [A 10, 11, 12]

Defendants in the specific performance law suit for the sole recovery of money capitulated within two months of Zirmer's death. Recovery was encumbered by a Fifty Thousand ($50,000) Dollar delinquent family memorial pledge to Oregon State University executed concurrently with the sale agreement. The balance due Oregon State was promptly paid. Plaintiff's retainer contingent on dollar recovery was vested.

The funds were segregated from estate assets, to be deposited in a potential charitable trust by trustees designated in the Will for worthy recipients.

In July 1990, the estate in closing posture, plaintiff sought statutory court instruction [ORS 114.275] [A 8] to temporarily transfer a portion of his vested retainer into the residuary trust. This was to reduce taxes and inventory. The judge, impatient and unacquainted with the file, delegated his judicial

responsibilities to private attorney Deras as "temporary co-personal representative of Zirmer" to examine the retainer. [A 14, 15]

This delegation of judicial responsibilities to Deras is facially illusory under Oregon law. [ORS 111.005] [A 8]

Deras observed the Zirmer retainer was plaintiff's forgery. This accusatory observation is nonsense. He published it in the probate file and disseminated widely. It is a technique of intimidation and defamation affecting Zirmer and plaintiff, which were among a host of his abuses.

The Zirmer-directed retainer was forensically certified as the true signature of Zirmer [A 18, 19, 20] [A 27, 28]

He brought in assistant attorney general, who is forbidden by statute to lend her office to private litigants. [ORS 180.060] [A 8] She concurred in Deras's observation that the Zirmer retainer was plaintiff's forgery. Intimidation nonsense again.

State power is evident. Non-state defendants, unentitled to participate in the Zirmer Will, were

brought in by Deras to object to the statutory protocol exercised by plaintiff. Lawful legatees did not participate.

The probate judge was timely and promptly disqualified by loss of jurisdiction [ORS 14.260] [A2-1] under plaintiff's motion [A 13] for change of judge based on prejudice. He persisted in an illusory jurisdiction status with Deras.

Documents and resignations demanded of plaintiff and trustees by the Court, without jurisdiction, through Deras, are not controlling. Deras, under his illusory authority, illegally pre-empted plaintiff's case management and related obligations.

The District Judge avoided complaint facts [A 2, p. 82] which must be taken as true. [A 21, 37] The case is not subject to dismissals under common legal principles, fortified by this court and lower court decisions.

Common legal principles violated include: a complaint appearing prolix with necessary details and evidence should not be dismissed if it apprises defendants of claims they are called to meet. The defendants were the actors. A civil rights complaint

should be liberally construed. Where the complaint is linked to Fifth and Fourteenth Amendment violations, a cause of action is stated. All persons are entitled to an impartial judge. This is a protected right. No person is above the law.

If legal principles were followed, the case would not have been dismissed by the District Judge. This would moot a gratuitous Ninth Circuit panel decision upholding the District Judge and uniquely penalizing plaintiff for detailing civil rights violations by powerful interests. [A 49, 57]

IN SUMMARY: Plaintiff was penalized for revealing civil rights and constitutional violations benefiting and rewarding defendant's illegalities. Plaintiff's complaint revealed collusive acts orchestrated under a disqualified state probate judge with his private attorney instrumentality acting under void judicial prerogatives. These acts are not subject to District Court dismissals under FRCP 8 (a). [A 9] The Ninth Circuit cannot penalize plaintiff for exercising appeal rights on the law.

REASONS FOR GRANTING THE WRIT

I **This Court Should Re-Assure All Persons That The Civil Rights Acts Cannot Be Abridged Or Constitutional Rights Be Maligned Or Ignored By District Judge Or Ninth Circuit Panel Granting Violators FRCP 8 (a) Motions In Complex Complaint Not Subject To Dismissals Under The Law. Unrestrained Power Is Especially Hazardous To Free Persons. Ours Is A Government Of Laws--Not Men.**

This Court in *Davis v. Passman*, [1979] 442 U.S. 226 held where complaint alleged Fifth Amendment violations a cause of action was stated. The complaint herein is linked to Fifth and Fourteenth Amendment violations.

"Due Process" of law is a property right in any proceedings, see *Matt v. U.S.*, 283 U.S. 747 and *Mapp v. Ohio*, 367 U.S. 643.

Defendant's motions should be denied. Where facts and disclosed evidence show their direct participation in concerted acts deprived Plaintiff of civil rights, compare *Smithson v. Ray*, [DC. Tenn] 429 F 11.

The existing complaint is sufficient to grant relief, see *California Dump Truck Owners v. Associated General Contractors*, [CA9-1977], 562 F2d 607. Defendant's acts were callous, reckless and indifferent to plaintiff's constitutional rights, compare *Davis v. Mason County*, [CA9], 927 F2d 1473, 1485.

No court can justify abridging the constitution [Art VI] [A 4,5] except possibly in exigent national emergencies. This case is not such an emergency.

The purpose of Sect. 1983 is to provide a remedy to "persons" where state remedy though adequate in theory is not available in practice. See *McNeese v. Board of Education*, 83 S.CT. 1433. [A 6]

The complaint dramatized the legal issues fundamental to acquainting defendants of their illegal accomplishments which they are called to meet, in the enforcement of the civil rights act and constitutional restraints. Common legal principles were violated.
All defendants lacked standing to object to plaintiff following probate protocol, see *Warth v. Seldin*,
422 US 490, 498.

The facts are uncommon. They expose underlying questions of state and national importance

which cannot be disregarded and guide federal and state justiciaries who may be tempted or motivated to ignore or treat constitutional violations as a nullity.

II Judicial Disqualification And Forfeiture Of Jurisdiction Is Founded On Public Policy Preserving Purity And Impartiality Of The Judge And Confidence And Respect For Decisions. This Rule Of Common Law Heritage Is Liberally Construed And Codified In Oregon ORS 14.260 [A 7] And Judicial Canons [A 8].

The rule is supported by *Cootings Corp. v. Continental Casualty Co.*, 393 U.S. 145.

The judge is disqualified. He had no authority to delegate his judicial obligations to any attorney or anyone with judicial prerogatives. It opens to many abuses, including special privileges, intimidations, and outrageous observations of forgery. The freedom of decisional processes is constitutionally distorted.

Under the rule of *Goldfarb v. Virginia Bar*, 421 U.S. 772, the judge had no right to question a pre-arranged retainer, successfully consummated because it is not a court function to delve into what is a reasonable

fee because no case is standard.

A state court appeal "is an inadequate remedy where allegedly prejudiced judge fails to disqualify himself...", see *Berger v. U.S.*, 255 U.S. 22,36. Oregon adheres--see *State ex rel Oliver v. Crookham* 301 Or.533 [1987].

The judge appointment of a judicial emissary is without foundation--it is void. [ORS 111.005] [A 8] The acts of the judge and his judicial instrumentality appear as retaliation for plaintiff filing a complaint with the judicial fitness commission and motion for change of judge. [ORS 1.410] [A2-1] [A 8] Because of the personal ingredient, nothing can be more elusive of estimate or decision than disposition by a prejudiced mind.

III The Ninth Circuit Panel Interpreted Plaintiff's Appeal Right As Violating A Court Order Of Questionable Virtue To Amend The Complaint. The District Judge Exonerated All Defendants. If Such Be Construed As Violating An Appeal Right, It Is, Under The Facts, Incapable Of Compliance, In The Light Of The Court Exonerations.

The District Judge's decision to exonerate all defendants is not subject to dismissal where she mis-apprehended the law and abused her discretion. Common legal principles were not observed. See plaintiff's argument against defendant, FRCP 8 (a) motions [A 2] [A 21-37]

The Ninth Circuit decision is not based on legal justification. [A 49-56; 57-59]

The facts present the issues clearly and afford the Court an opportunity to define rights and obligations in similar cases for the benefit of future litigants and for federal court guidance hearing their causes.

IN SUMMARY: This cause is of national importance and significance. It involves the acts of disqualified public officials and judicial delegate acting under void authority. It seriously impedes judicial respect and administration. The standard of Ninth Circuit review appears mis-apprehended or grossly mis-applied.

Decision below appears shockingly wrong and present substantial due process violations.

Ninth Circuit and District Court mis-construed FRCP 8 (a) dismissals; and departed from accepted and usual judicial proceedings by sanctioning and sanitizing acts violative of constitutional restraints.

This also calls for this Court to exercise its supervisory powers.

CONCLUSION

The Court of Appeals decision conflicts with applicable decisions of this Court and adversely affects sound judicial administration by rewarding violators of acts the Constitution restrains. The decision incorrectly resolves important questions of federal power.

Consequently the petition should be granted and remanded to the Ninth Circuit to vacate its decision and the District Court decision and require defendants to answer the complaint, and/or such other and further relief is meet and proper under the circumstances.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADELBERT G. CLOSTERMANN,	)	COURT OF APPEALS
Plaintiff-Appellant,	)	NO.92-36779
v.	)	
THE HONORABLE LEE JOHNSON, et al,	)	DISTRICT COURT
Defendant-Appellees.	)	NO. CV 92-514 FR

Appeal from the United States District Court

for the District of Oregon.

APPELLANT'S EXCERPTS OF RECORD

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CONSTITUTIONAL PROVISIONS

STATE STATUTES AND RULES

ARTICLE VI.

Constitution, federal laws and treaties control state constitutions and laws; oath of federal and state officers to support constitution; religious tests as qualification to office or trust. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this

Constitution; but no religious Test shall ever by required as a Qualification to any Office or public Trust under the United States.

AMENDMENT XIV

Section 1. Citizenship; privileges and immunities; due process; equal protection. All persons born or naturalized i the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FIFTH AMENDMENT

Restrains persons from being deprived of life, liberty or property without due process of law.

1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. 1979; Pub. L.96-170, 1, Dec. 29, 1979,93 Stat. 1284.

OREGON REVISED STATUTES

ORS 14.260(1) provides:

"Any party to or any attorney appearing in any cause, matter or proceeding in a circuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that such party or attorney believes that such party or attorney cannot have a fair and impartial trial or hearing before such judge, and that it is made in good faith and not for the purpose of delay. No specific grounds for the belief need be alleged. Such motions shall be allowed unless the judge moved against, or the presiding judge in those counties where there is one, challenges the good faith of the affiant and sets forth the basis of such challenge. In the event of such challenge, a hearing shall be held before a disinterested judge. The burden of proof shall be on the challenging judge to establish that the motion was made in bad faith or for the purposes of delay."

3 Canon 3C(1) of the code of Judicial Conduct provides:

"A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

"(a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings[.]"

OREGON REVISED STATUTES ORS.

ORS 1.410 Provides for complaint to the Judicial Fitness Commission.

ORS 114.275 Provides for instruction by the probate judge to the personal representative.

ORS 111.005 Statutory definitions applicable to Probate Law. Does not include "Temporary Co-Personal Representative."

ORS 180.060 Attorney general not empowered to advise private litigants.

RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. relief in the alternative or of several different types may be demanded.

MULTNOMAH COUNTY OREGON
DEPARTMENT OF PROBATE
LETTERS TESTAMENTARY
CASE NO. 891292298

THIS CERTIFIES that the Will of Martin J. Zirmer deceased, has been proved and Adelbert G. Clostermann has been and is at the date hereof the duly appointed, qualified and acting Personal Representative of the Will and estate of the decedent.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of Multnomah, in which proceedings for administration upon the said estate are pending, do hereby subscribe my name and affix the seal of said court

This 5th day of December, 1989

Clerk of the Court
By Jane L. Dudgeon

CERTIFICATE

STATE OF OREGON)
MULTNOMAH COUNTY) ss.

I, Administrator of the Circuit Court of the State of Oregon, for Multnomah County, which Court has exclusive jurisdiction of all probate proceedings in said County, do hereby certify that the foregoing copy of Letters Testamentary has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record in my office and in my custody.

I further certify that said Letters are now in full force and effect.

Page 3B, cont.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court.

This DEC 07 1989

ADMINISTRATOR
By /s/_____

original in file
LTTM/PROBATE/TSTDOC

EXHIBIT B

A-13

(COVER ONLY)

Received
Department of Probate
1990 NOV 15 PM 2:55

IN THE CIRCUIT COURT

OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

Department of Probate

In the Matter of	)	Case No.
the Estate of	)	8912-92298
	)	
MARTIN J. ZIRMER	)	MOTION FOR
	)	CHANGE OF
Deceased.	)	JUDGE
	)	ORS 14.260;
	)	ORS 14.270

Adelbert G. Clostermann, personal representative

in the within estate, and acting as his own attorney

CIRCUIT COURT OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 SW 4TH AVENUE
PORTLAND, OR 97204

LEE JOHNSON
JUDGE
DEPARTMENT 10

COURTROOM 528
(503)248-3165

August 1, 1990

Warren Deras, Esq.
1400 SW Montgomery Street
Portland, Oregon 97201

Re: Estate of Martin J. Zirmer
Multnomah County Case No. 8912-92298

Dear Mr. Deras:

I am appointing you as a temporary co-representative in the subject estate for the purpose of reviewing the claim of the personal representative for attorney fees pursuant to a retainer agreement dated May 4, 1989, a copy of which is enclosed.

Considering the nature and amount of the claim, the court believes it is desirable to have an independent review of the claim.

Sincerely,

/s/Lee Johnson

LJ/jim
Enclosure
cc: Court File 8912-92298
cc: Adelbert G. Clostermann, Esq.

Page 3A, cont.

A-16

RETAINER AGREEMENT

I, Martin Zirmer retain Adelbert G. Clostermann as my attorney in fact to represent my interest in any litigation arising out of a May 15, 1985 sale of my Washington County Real Property of family heritage to Lloyd D. Taylor and Arletta M. Taylor.

The transaction between the parties thereto was documented as personal. I have not approved the conveying of this land or obligation to any one for any purpose.

This obligation is in default. The balance due on April 15, 1989 was $420,381.84. You are instructed to specific performance enforcement of the obligation.

The parties, plaintiff and attorney agree the legal services fee is contingent on the dollar amount of recovery for satisfaction computed as follows:

(A) Fifty (50%) per cent of the recovery.

(B) Plaintiff or successor shall satisfy all costs, disbursements and funds advanced for any purpose hereto.

(C) This retainer agreement shall be an obligation of myself, my estate and assigns and shall accompany any interest in said sale agreement.

(D) You are instructed to proceed for enforced satisfaction and obtain adherence to the honor I extended to the buyers Taylor over my signature and faith.

Signed at Portland, Oregon this May 4, 1989 concurrently with execution of the complaint.

/s/Martin Zirmer

/s/Adelbert G. Clostermann

Page 141, cont.

Dorothy V. Lehman

FORENSIC HANDWRITING EXPERT

Direct dial number: 503/654-7156

February 5, 1992

Adelbert G. Clostermann
Attorney at Law
711 SW Alder - Suite 211
Portland, OR 97205

QUESTIONED DOCUMENT:

Retainer Agreement dated May 4, 1989, bearing the questioned signature of Martin Zirmer. (original examined)

STANDARDS USED FOR COMPARISON:

Thirteen miscellaneous legal documents dated in 1989, 1988, 1987, 1985 and 1984, each bearing a known genuine signature of Martin Zirmer. (Several originals examined, including Mr. Zirmer's Will)

Original Benj. Franklin Savings Account Register
Page 141A

containing 130 entries written by Martin Zirmer, first entry dated 10/2/87 and last entry dated 10/31/89. (original examined)

One page of handwritten notes, including four genuine signatures of Martin Zirmer, executed By Martin Zirmer. (originals examined)

CONCLUSION:

It is my opinion that there is no doubt that the questioned signature of Martin Zirmer on the Retainer Agreement was executed by Martin Zirmer. An examination of the original signature revealed that it was written with a nib tip pen (probably a fountain pen) with dark blue ink. It appears that Mr. Zirmer was holding the pen at an angle which was hindering the flow of ink evidenced by the double track of the nib tip pen in portions of the signature. In spite of the minimal variance caused by the angle of the pen and the probable awkward position of the writer, the unconscious writing habits are the same. This further supports the conclusion that only Mr. Zirmer could have executed his signature on the Retainer Agreement.

I am basing my conclusion on comparing style,

Page 141 A, cont.

fluency, slant, baseline, size and size relationship, spacing, space patterns, letter formation, beginning and ending strokes, pressure and pressure patterns, continuity, connecting strokes, the unconscious movement of the writing pattern and certain peculiarities which make each individual's handwriting identifiable.

Please let me know if I may be of further service to you. My resume is enclosed.

/s/Dorothy V. Lehman

Suite 1000, Orbanco Building - 1001 SW Fifth Avenue
Portland, Oregon 97204
Telex: 360823 HQ PTL - Telecopier: (503) 228-2058
Telephone: (503)220-1699

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PLAINTIFF'S JULY 20, 1992, ARGUMENT

REPORTED BY MR. GRUBE BEFORE

JUDGE FRY IN OPPOSITION TO

DEFENDANT'S MOTIONS TO DISMISS.

MR. MCDONALD: YOUR HONOR, I'M PREPARED TO FOLLOW MR. CLOSTERMANN.

THE COURT: ALL RIGHT. FINE MR. CLOSTERMANN.

MR. CLOSTERMANN: IF IT PLEASE, YOUR HONOR, AND COUNSEL, PLAINTIFF'S COMPLAINT EXPRESSES A VIEW THAT THE 14TH AMENDMENT IS INVOLVED AND IN READING IT ALSO THE FIFTH

AMENDMENT. THE OVERVIEW OF THIS CASE INVOLVES THE DISQUALIFICATION OF THE PROBATE JUDGE IN THIS PARTICULAR PROBATE. WHICH IS MANDATORY UNDER OREGON LAW, AND I'VE CITED SOME CASES TO THAT EXTENT. IT IS ALSO MANDATORY UNDER THE 14TH AMENDMENT AND ALSO INVOLVES A FIFTH AMENDMENT BECAUSE WE DO NOT HAVE AN IMPARTIAL JUDGE.

NOW, EVERY LITIGANT IN OUR SOCIETY IS ENTITLED TO THE IMPARTIALITY OF A COURT, AND A JUDGE MAY NOT BE THE JUDGE OF HIS OWN CONDUCT. AND THEIR'S CASE LAW TO THAT EXTENT THAT YOUR HONOR IS QUITE FAMILIAR WITH.

IN ADDITION, HE APPOINTED A PRIVATE

ATTORNEY TO RESOLVE JUDICIAL OBLIGATIONS. HE FAILED TO INSTRUCT PLAINTIFF ON THE MATTER OF AN EARNED ATTORNEY FEE WHICH WAS NOT A CLAIM AGAINST THE GENERAL ASSETS OF THE ESTATE, IT WAS AN ENCUMBRANCE AGAINST THE SUCCESSFUL RESOLUTION OF A LAWSUIT. WHEREAS PLAINTIFF, I'M SPEAKING PLAINTIFF ZIRMER, NEVER EXPECTED TO HAVE THE CLAIM RESOLVED IN THE FULL TOTAL OF THE SUM OF THE COMPLAINT AGAINST THE BUYERS OF HIS PROPERTY. IT WAS SIMILAR TO THE ENCUMBRANCE THAT MR. ZIRMER PLACED UPON THE SALE OF THE PROPERTY, THAT IS THE MONETARY RETURN OF THE PROPERTY, THE BALANCE OF WHICH WAS $50,000 PAID TO

OREGON STATE OUT OF $125,000 GESTURE ON THE PART OF MR. ZIRMER IN 1985, AND THAT WAS PROMPTLY SATISFIED.

HOWEVER, OREGON STATE ENDED UP WITH NOT ONLY THAT $125,000, BUT THEY ENDED UP WITH THE BALANCE -- THE GREATER BALANCE OF THE FUNDS IN THE ESTATE OUT OF ESTATE ASSETS. THEY WERE ONLY ENTITLED TO THE $50,000 BALANCE THAT WAS DUE FOR THE ZIRMER FAMILY MEMORIAL TO OREGON STATE. THE PROPERTY HAD BEEN SOLD BY MR. ZIRMER AFTER HIS WILL -- NO, EXCUSE ME. STRIKE THAT. THE PROPERTY HAD BEEN SOLD BY ZIRMER IN 1985. HIS WILL WAS EXECUTED IN DECEMBER OF 1984, WHICH

EMPOWERED HIS PERSONAL REPRESENTATIVE, WHICH IN THIS CASE WAS CLOSTERMANN, TO SELL THE PROPERTY. HOWEVER, ZIRMER SOLD THE PROPERTY IN 1985 AND THAT ASSET WAS ADEEMED THAT FOLLOWS, AND OREGON STATE WOULD ONLY RECEIVE THE BALANCE DUE, $50,000. THAT WAS RECOVERED OUT OF THE ASSETS. SO THIS WAS NOT A CLAIM AGAINST THE GENERAL ASSETS OF THE ESTATE. IT WAS A PREARRANGED ENCUMBRANCE.

NOW, THE PROBLEM ON THE APPEAL IS INTERESTING IN THAT THROUGH THE PROCESS THE APPELLATE PROCEDURES WERE DENIED PLAINTIFF BECAUSE THROUGH EFFORTS OF JUDGE JOHNSON AND

HIS COURT APPOINTEE, THE ASSETS WERE REMOVED FROM MY -- FROM PLAINTIFF'S CONTROL. SO THERE WAS NO STANDING AND NO MONEY FOR ME TO BRING THE ERRORS TO THE ATTENTION OF THE APPELLATE COURT IN OREGON.

WE DID PROCEED WITH SEPARATE DECLARATORY JUDGMENT PROCEEDINGS AGAINST ALL DEFENDANTS. HOWEVER, AGAIN, MR. DERAS CAME IN WITH A PETITION FOR REMOVAL WHICH WAS GRANTED BY THE COURT, SO THERE WAS NOT ONLY NO MONEY TO PROCEED IN THE APPELLATE PROCEEDING, THERE WAS NO STANDING TO PROCEED BECAUSE EVERYTHING WAS REMOVED FROM PLAINTIFF.

Page 166, 167

NOW, THOSE ARE THE ESSENTIAL FACTS. THERE WAS NO REMEDY IN THE STATE COURT. PLAINTIFF DID FILE A MANDAMUS MOTION AND THAT WAS DENIED. I UNDERSTOOD LATER THAT IT WAS AN INTERLOCUTORY NATURE, BUT WITH THE PROCEEDINGS IN THE STATE COURT AND JUDGE JOHNSON ACTED ON THE RESOLUTION OF MR. DERAS AS HIS APPOINTEE, HE SIMPLY FOLLOWED THE SUGGESTIONS OF MR. DERAS.

NOW, THE APPOINTMENT OF MR. DERAS WAS A SIMPLE COURT WRITING. IT DID NOT RISE TO THE DIGNITY OF A STATUTORY COURT REPRESENTATIVE. THE STATUTORY COURT REPRESENTATIVE IS UNDER THE SEAL OF THE COURT, AND BASED UPON THAT SEAL OF

THE COURT, THE ORDER OF APPOINTMENT SIGNED BY THE COURT ADMINISTRATOR IS PUBLISHED IN A DAILY JOURNAL OF COMMERCE. THERE ARE OTHER NEWSPAPERS ALSO. BUT THAT IS THE NOTICE.

THERE WAS NO NOTICE PUBLISHED ANYPLACE EXCEPT BETWEEN THE COURT AND MR. DERAS, I RECEIVED A COPY OF IT. ANY ATTORNEY VIEWING THAT WOULD VIEW IT WITH DISTRUST. AT LEAST THAT IS MY IDEA.

NOW, THE CLAIM AS TO JUDGE JOHNSON THEY INDICATE SHOULD BE DISMISSED. THERE IS COLORABLE RIGHTS UNDER OUR SOCIETY TO PETITION THE SOVEREIGN, AND THAT'S WHAT PLAINTIFF HEREIN IS

DOING. TO HEAR GRIEVANCES. JUDGE JOHNSON LOST JURISDICTION. HE HAD NO RIGHT TO APPOINT A TEMPORARY CO-PERSONAL REPRESENTATIVE, WHICH IS UNKNOWN UNDER OREGON LAW.

NOW, IN ADDRESSING MYSELF TO THE ARCHDIOCESE AND THE ATTORNEY GENERAL, THIS CASE WAS NEVER ABLE TO BE BROUGHT TO THE ATTENTION OF THE APPELLATE COURT UNDER THE PROCEDURES ANNOUNCED BECAUSE PLAINTIFF HEREIN WAS REMOVED. THERE WAS NO MONEY TO PROCEED FURTHER. THE ATTORNEY GENERAL INDICATED PARTICIPATION. THAT IS UNDER COLOR OF LAW. AS WAS THE ACTS OF JUDGE JOHNSON.

NOW, THE FEDERAL RIGHTS SUBJECT TO THIS LAWSUIT ARE THOSE THAT ARE GRANTED BY THE STATE LAW, AND IF NOT GRANTED, ARE SUBJECT TO FEDERAL RESTRAINTS UNDER THE 14TH AND THE FIFTH AMENDMENT. THERE MAY BE OTHER AMENDMENTS, BUT THOSE ARE THE ONES THAT PLAINTIFF IS RELYING UPON. THE STATE COURT AND THE ATTORNEY GENERAL, ASSISTANT ATTORNEY GENERAL, ALL ACTED UNDER THE COERCIVE POWER OF THE STATE LAW. AND THIS CLAIM FOR ATTORNEY'S FEES ARISING OUT OF THE SUCCESSFUL RECOVERY OF ASSETS IN THE LAWSUIT AGAINST THE PURCHASERS OF ZIRMER'S PROPERTY, THAT WAS BASED ON A PREARRANGED RETAINER. AND UNDER COLOR OF

STATE LAW, MR. DERAS, THE JUDGE, AND ASSISTANT ATTORNEY GENERAL CINNEGAR INDICATED THAT THE RETAINER WAS A FORGERY, WHICH INDICATES MISCONDUCT ON THE PART OF AN ATTORNEY. AND I BRING THAT TO THE COURT'S ATTENTION BECAUSE IN THE FILE YOU WILL FIND A REPORT BY A FORENSIC ANALYST THAT THE RETAINER WAS IN TRUTH AND FACT THE SIGNATURE OF MR. ZIRMER.

AND FURTHER ACTING UNDER HIS APPOINTMENT, MR. DERAS CONTACTED THE STATE BAR AND CAME UP WITH ANOTHER SOLUTION, THAT THE RETAINER COULD NOT BE SUPPORTED UNDER AN HOURLY BASIS. MR. ZIRMER HELD A HIGHER DEGREE FOR HIS LAWYER THAN

THE MARKETPLACE OF THE STATE BAR. MR. ZIRMER MADE HIS OWN DECISIONS AND HE DICTATED HIS OWN IDEAS ABOUT WHAT THE COMPENSATION OF HIS COUNSEL WAS WHEN THERE WAS MONEY AVAILABLE TO HIM FOR THAT PARTICULAR PURPOSE.

PLAINTIFF HEREIN NEVER BILLED MR. ZIRMER. OUT OF A 60-YEAR FAMILY FRIENDSHIP AND 30-YEAR ATTORNEY/CLIENT RELATIONSHIP. THE CLIENT SET THE FEE.

THERE DOES NOT APPEAR TO BE ANY JUDICIAL IMMUNITY ATTACHED TO A JUDGE WHO LOSES JURISDICTION UNDER A SITUATION OF THIS TYPE. AN AFFIDAVIT OF PREJUDICE IS SIMILAR TO THE

PEREMPTORY DISQUALIFICATION OF A JUROR, AND THAT'S WHAT HAPPENED IN THIS CASE. THE JUDGE CANNOT BE THE JUDGE OF HIS OWN DISQUALIFICATION. STATE LAW REQUIRES HIM TO ASSIGN THE AFFIDAVIT TO ANOTHER JUDGE FOR A HEARING. HE CANNOT JUDGE HIS OWN CONDUCT.

I BELIEVE THIS COMPLAINT IS NOT SUBJECT TO DISMISSAL UNDER ANY OF THE THEORIES PRESENTED. THE COMPLAINT GIVES FAIR NOTICE TO ALL PARTIES AND DISCLOSES THE ROLES OF THE PARTICULAR PARTIES INVOLVED. THE FACT THAT IT IS LAW MAY BE ARTICULATED WITH AN ARCHITECT DRAWING, A COMPLICATED SET OF DESIGNS FOR A BUILDING THAT

EXCEEDS MORE THAN ONE FLOOR. YOU HAVE TO BRING IN ALL THESE OTHER REQUIREMENTS SUCH AS SANITATION AND WATER AND WHATEVER IT IS.

PLAINTIFF HEREIN HAS DELINEATED THE PARTICULAR ACTIVITIES OF THE VARIOUS DEFENDANTS SO THAT THE COURT WOULD KNOW WHAT TO RULE ON AND THE DEFENDANTS WOULD KNOW JUST EXACTLY WHAT THEY SHOULD RESPOND TO. I THINK THE REAL GIST OF THE OCCASION IS THAT THE DEFENDANTS THOUGHT PLAINTIFF WOULD BE SO EMBARRASSED WITH THE CHARGE OF MISCONDUCT, SHALL WE SAY, AND FORGING A RETAINER, THAT THEY DIDN'T THINK PLAINTIFF WOULD GO FURTHER.

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PLAINTIFF HAS THE VIGOR TO STAND UP AND SHOW WHERE THESE PARTICULAR PARTIES ERRED UNDER COLOR OF STATE LAW.

NOW, THE DEFENDANTS ARE ADEQUATELY INFORMED OF WHAT IS CLAIMED. THE GROUNDS ARE SET FORTH AND THERE ARE OTHER AVENUES FOR EXPLORATION OF THE PARTICULAR GROUND THAT THEY MAY HAVE IN MIND. BUT THEY'RE SET FORTH IN SUFFICIENT DETAIL AND CERTAINLY THE EXTENT OF THE COMPLAINT IS NOT SUBJECT TO CRITICISM BECAUSE IT'S NOT SHORT ENOUGH OR IT COULD BE SUBJECT TO CRITICISM IF IT WAS TOO LONG WHEN THERE'S NOT SUFFICIENT FACTS.

HERE THE COMPLAINT WOULD SUPPORT FIFTH AND 14TH AMENDMENT CONSIDERATION UNDER RULES -- OF THE CASE LAW RULES, STATED THE CAUSE OF ACTION. NOW, IF WITHIN THE FRAMEWORK OF THE COMPLAINT EVIDENCE MAY BE INTRODUCED WHICH WILL SUSTAIN A GRANT OF RELIEF TO PLAINTIFF, THE COMPLAINT IS QUITE SUFFICIENT. I WOULD URGE THIS COURT TO CONSIDER THE COMPLAINT IS SUFFICIENT ON THAT GROUND. MOTIONS TO STRIKE ARE NOT FAVORED. NEITHER ARE MOTIONS TO DISMISS. I SUBMIT TO YOU, YOUR HONOR, ON THE BASIS OF THE PLEADINGS, THAT THIS CASE SHOULD NOT BE DISMISSED. THANK YOU.

THE COURT: ALL RIGHT. I AM GOING TO

GRANT THE MOTION OF DEFENDANTS LEE JOHNSON AND CHARLES CROOKHAM TO DISMISS WITHOUT FURTHER STATEMENT, AND DO YOU WISH TO RESPOND, MR. BARNHISEL? I MEAN, DO YOU WANT TO MAKE ANY KIND OF RESPONSE?

FILED
92 SEP - 3 PM 4:23
CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON
/S/MP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ADELBERT G. CLOSTERMANN, Plaintiff, v. THE HONORABLE LEE JOHNSON as Chief Probate Judge Circuit Court Multnomah County in his official and personal capacity; THE HONORABLE CHARLES	)	Civil No. 92-514-FR OPINION AND ORDER

CROOKHAM as successor)
to the HONORABLE)
DAVE FROHNMAYER)
in supervisory role of)
the Charitable Activities,)
Division of the)
ATTORNEY GENERAL,)
RUTH CINNEGAR in)
her official and)
personal capacity;)
WARREN C. DERAS;)
OREGON STATE)
UNIVERSITY)
FOUNDATION, INC.;)
THE CATHOLIC)
ARCHDIOCESE OF)
OREGON, INC.; and)
UNIVERSITY OF)
PORTLAND, INC.,)
)
Defendants.)
_____)

Adelbert G. Clostermann
711 S.W. Alder Street, Suite 211
Portland, Oregon 97205

Plaintiff Pro Se

Page 151, cont.

Charles S. Crookham
Attorney General
Luther L. Jensen
Assistant Attorney General
450 Justice Building
Salem, Oregon 97310

Attorneys for State Defendants

Peter L. Barnhisel
Fenner, Barnhisel, Willis & Barlow
123 N.W. 7th Street
P.O. Box 396
Corvallis, Oregon 97339

Attorneys for Defendants Oregon State University Foundation and Warren C. Deras

Joseph D. McDonald
Palmer, Feltz, Smith & McDonald
593 Pacwest Center
1211 S.W. Fifth Avenue
Portland, Oregon 97204

Attorneys for Defendants University of Portland and Archdiocese of Portland in Oregon

FRYE, Judge:

This is a civil rights action brought pursuant to 42 U.S.C. SS 1983, 1985, by pro se plaintiff, Adelbert G. Clostermann, against defendants, Lee Johnson, Charles Crookham, Ruth Cinnegar, Warren C. Deras, the Oregon State University Foundation, Inc., the Catholic Archdiocese of Oregon, Inc. and the University of Portland, Inc.

The matters before the court are:

1) the motion of defendants University of Portland and the Catholic Archdiocese of Portland in Oregon [sic] under Fed. R. Civ. P. 8 and 12 (#18);

2) the motion of defendants Oregon State

University Foundation and Warren C. Deras under Fed. R. Civ. P. 12 (#19); and

3) the motion of defendant Ruth Cinnegar to dismiss and to strike (#25).

BACKGROUND

Clostermann is a former attorney who one represented a client by the name of Martin Zirmer. Clostermann prepared a will for Zirmer in which Clostermann was named by Zirmer as personal representative of his estate. Following the death of Zirmer, Clostermann filed a petition for a decree of final distribution in the Probate Division of the Circuit Court of the State of Oregon for the County of

Multnomah. Clostermann included a claim for attorney's fees, which was ultimately denied by the court. Dissatisfied with the outcome of the probate proceeding, Clostermann filed a separate action in the Circuit Court of the State of Oregon for the County of Multnomah, a mandamus proceeding in the Supreme Court of the State of Oregon, and finally this action. Defendants move to dismiss Clostermann's complaint for, among other reasons, the failure of Clostermann to comply with Fed. R. Civ. P. 8(a).

APPLICABLE LAW

Rule 8(a) provides, in pertinent part:

> A pleading which sets forth a claims for relief . . . shall contain (1) a short and plain statement

> of the grounds upon which the court's jurisdiction depends . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

Even if the factual elements of the cause of action are present but are dispersed throughout the complaint and not organized into a "short and plain statement of the claim," dismissal for failure to satisfy the requirements of Rule 8(a) is proper. Sparling v. Hoffman Constr. Co., 864 F.2d 635, 640 (9th Cir. 1988).

A pleading which fails to comply with the requirements of Rule 8(a) may be dismissed with prejudice pursuant to rule 41(b). Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

However, when faced with a violation of Rule 8, the court should explore possible alternatives to dismissal. Id. at 674.

RULING OF THE COURT

In his complaint, Clostermann does not set forth a short and plain statement of his claims for relief. Moreover, Clostermann does not separately state his claims for relief or adequately specify how each named defendant participated in the alleged wrongs.

Clostermann will have twenty days from the date of this opinion and order to file an amended complaint which complies with Rule 8(a). Although he is proceeding pro se, Clostermann is a former attorney and

therefore is presumably capable of drafting a concise, understandable pleading setting forth his claims. If Clostermann fails to replead within twenty days, the court will dismiss his complaint with prejudice. See Hatch v. Reliance ins. Co., 758 F.2d 409, 415 (9th Cir.) (affirming dismissal of a 70-page "confusing and conclusory complaint), cert. denied, 474 U.S. 1021 (1985); Nevijel, 651 F.2d at 674 (affirming dismissal of a 23-page amended complaint that added defendants without leave of the court and that "was equally as verbose, confusing and conclusory as the initial complaint"); Schmidt v. Herrmann, 614 F.2d 1221, 1224 (9th Cir. 1980) (affirming dismissal of a 30-page

complaint that was a "confusing statement of a non-existing cause of action").

CONCLUSION

The motions of defendants University of Portland and the Catholic Archdiocese of Portland in Oregon [sic] (#18), defendants Oregon State University Foundation and Warren C. Deras (#19), and defendant Ruth Cinnegar (#25) are granted; provided, however, that Clostermann shall have twenty days from the date of this opinion and order to file an amended complaint setting forth a short and plain statement of his claims. If Clostermann fails to file an amended complaint within twenty days from the date of this opinion and order, his

complaint will be dismissed with prejudice.

IT IS SO ORDERED.

DATED THIS 2 DAY OF SEPTEMBER, 1992.

/S/Helen J. Frye
United States District Judge

FILED
MAR 16 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS
NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADELBERT G. CLOSTERMANN,	)	No. 92-36779
	)	D.C. No.
Plaintiff-Appellant,	)	CV-92-514-HJF
v.	)	
LEE JOHNSON; CHARLES CROOKHAM; RUTH CINNEGAR; WARREN DERAS; OREGON STATE UNIVERSITY FOUNDATION, INC.; CATHOLIC ARCHDIOCESE OF OREGON, INC.;	)	MEMORANDUM*

UNIVERSITY OF PORTLAND, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Helen J. Frye, District Judge, Presiding

Submitted March 8, 1994**

Before: FLETCHER, BRUNETTI, AND TROTT, Circuit Judges.

Adelbert G. Clostermann appeals pro se the district court's dismissal of his 42 U.S.C. 1983 action

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4. Accordingly, the request for oral argument is denied.

for failure to file an amended complaint as directed by the court. We have jurisdiction under 28 U.S.C. 1291. We review the district court's decision for abuse of discretion, Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987), and we affirm.

Clostermann is a former attorney who once represented Martin Zirmer, for whom he prepared a will in which he was named personal representative of Zirmer's estate. Following Zirmer's death, Clostermann filed a petition for a decree of final distribution in the Probate Division of the Oregon Circuit Court for the County of Multnomah. Clostermann included a claim for attorney's fees, which was ultimately denied. In response to this denial, and other matters regarding the

probate of Zirmer's estate, Clostermann filed this 42 U.S.C. 1983 action against Lee Johnson, the Probate Judge; Charles Crookham, the Oregon Attorney General; Ruth Cinnegar, an Assistant Attorney General; and other parties involved with the probate of Zirmer's estate.

Clostermann contends that the district court erred in dismissing his action for failure to file an amended complaint as directed by the court. This contention lacks merit.

A district court may dismiss an action for failure to comply with any order of the court. Fed. R. Civ. P. 41(b); Ferdik v. Bonzelet, 963 F.2d 1258,1260 (9thCir.), cert. denied, 113 S. Ct. 321 (1992). Dismissal, however,

is a severe penalty and should be imposed only in extreme circumstances. Ferdik, 963 F.2d at 1261. We will not disturb the district court's dismissal unless there is a definite and firm conviction that the district court committed a clear error of judgment in its conclusion based upon a weighing of the relevant factors. Eldridge, 832 F.2d at 1136. These factors include: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Thompson v. Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir.), cert. denied, 479 U.S. 829 (1986).

Pro se complaints are construed liberally. Ferdik, 963 F.2d at 1261. "Thus, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." Id.

Here, the district court dismissed Clostermann's action on September 2, 1992, for failure to set forth a short and plain statement of his claims for relief as required by Fed. R. Civ. P. 8(a), and gave him twenty days to file an amended complaint. In the order, the district court specified the deficiencies in the complaint, and warned Clostermann that if an amended complaint was not filed within 20 days, his complaint would be

dismissed. Clostermann did not file an amended complaint. On September 29, 1992, the district court dismissed the action.

In light of the express instructions and warning given Clostermann, and his failure to file an amended complaint pursuant to those instructions, the district court did not abuse its discretion by dismissing Clostermann's action. See Ferdik, 963 F.2d at 1261.*1/

AFFIRMED.

---

*1/ On July 20, 1992, the district court granted the motion of Judge Lee Johnson and Attorney General Charles Crookham to dismiss Clostermann's complaint as it applied to them. The minute granting the motion to dismiss does not state the basis for dismissal. However, the motion does allege, inter alia, that Clostermann failed to comply with Fed. R. Civ. P. 8(a). Therefore, the district court's dismissal of Clostermann's

complaint as to Judge Johnson and Attorney General Crookham may be affirmed on the same grounds as the dismissal of the action as to the remaining defendants.

A TRUE COPY
ATTEST JUN 16 1994
Clerk of Court
by: Deputy Clerk

FILED
94 JUN 20 PM 2:18
CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

JUDGMENT

==========

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 92-36779
CT/AG#: CV-92-514-HJF

ADELBERT G. CLOSTERMANN

Plaintiff - Appellant

v.

LEE JOHNSON, The Honorable, as Chief Probate Judge Circuit Court Multnomah County in his official and personal capacity; CHARLES CROOKHAM, as successor to the Honorable Dave Frohnmeyer in supervisory role of the Charitable activities, Division of

the Attorney General; RUTH CINNEGAR, in her official and personal capacity; WARREN DERAS; OREGON STATE UNIVERSITY FOUNDATION, INC. (OSU); CATHOLIC ARCHDIOCESE OF OREGON, INC.; INC.; UNIVERSITY OF PORTLAND, INC. (UP)

Defendants - Appellees

APPEAL FROM the United States District Court for the district of Oregon (Portland).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon (Portland) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the

judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered March 16, 1994.

A TRUE COPY
ATTEST JUN 16 1994
Clerk of Court
by: Deputy Clerk

FILED
June 8, 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADELBERT G. CLOSTERMANN,	)	No. 92-36779
	)	D.C. No.
Plaintiff-Appellant,	)	CV-92-514-HJF
	)	
v.	)	
	)	
LEE JOHNSON; CHARLES CROOKHAM; RUTH CINNEGAR; WARREN DERAS; OREGON STATE UNIVERSITY FOUNDATION, INC.; CATHOLIC ARCHDIOCESE OF OREGON, INC.; UNIVERSITY OF	)	ORDER

PORTLAND, INC.,)
)
Defendants-Appellees.)
_____)

Before: FLETCHER, BRUNETTI, and TROTT
Circuit Judges

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc.

Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.